BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Ena Drummond February 27, 1990, alleging discrimination in employment on the basis of sex, harassment and sexual solicitation.

B E T W E E N:

Ontario Human Rights Commission

- and -

Ena Drummond

Complainant

- and -

Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Respondents

DECISION ON REMEDY

Adjudicator : Katherine Laird

Date : January 6, 1999

Board File No: 93-0052

Decision No : 99-01

Board of Inquiry (*Human Rights Code*)
505 University Avenue
Suite 201, Toronto ON M5G 2P3
Phone (416) 314-0004 Fax: (416) 314-8743 Toll free 1-800-668-3946

APPEARANCES

Ontario Human Rights Commission	)	Alan D'Silva, Counsel
Ena Drummond, Complainant	)	Roger Rowe, Counsel
Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.) Bernard Jackobsen Hugh Kerr, Respondents	)	Israel Balter, Counsel

Introduction

A decision on the merits of this complaint was issued by the Board of Inquiry on June 18, 1998. In that decision, I found that the personal and corporate respondents had infringed the rights of the complainant, under s. 7(2) and s. 5(1) of the *Human Rights Code*[1] ("*Code*"), to freedom from harassment and discrimination in employment. The harassment suffered by the complainant was found to consist of on-going sexual touching and taunting over a period of several months by two non-management employees of Tempo Paint and Varnish Co. (hereinafter referred to as "Tower Chemicals"). The failure of management to deal with the harassment was found to have imposed upon the complainant a requirement to work in an increasingly hostile and discriminatory environment. Further, I found that the on-going harassment suffered by the complainant resulted in a workplace incident which itself led to the termination of the complainant's employment. On this basis, I found that the complainant's dismissal was causally connected with the harassment and discrimination, and an infringement of her right to equal treatment in employment.

The hearing was reconvened on October 16, 1998 to hear submissions on remedy. Pursuant to s. 41(1)) of the *Code*, this decision awards monetary compensation to the complainant for losses arising out of the infringement of her rights, and imposes certain public interest remedies sought by the Commission.

Remedial Authority of the Board of Inquiry

The order-making authority of the Board, following a finding that a right under the *Code* has been infringed, is established in s. 41(1) of the *Code* as follows:

> Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 9 by a party to the proceeding, the board may, by order,
>
> (a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this

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[1] R.S.O. 1990, c. H.19, as amended.

Act, both in respect of the complaint and in respect of future practices; and

(b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding $10,000, for mental anguish.

Ontario human rights jurisprudence has articulated several categories or types of remedies which may be requested under s. 41(1). Under paragraph (a), the Board[2] has ordered both personal remedies, such as reinstatement in employment, and public interest remedies, such as the establishment of workplace anti-discrimination policies. Under paragraph (b), the Board has ordered monetary compensation for specific losses, such as lost earnings, as well as for the less-readily quantifiable loss of the right to freedom from discrimination. These two types of restitutional damages are commonly referred to in the jurisprudence as "special damages" and "general damages" respectively. In addition, the Board has awarded damages for mental anguish as a separate head of recovery in circumstances where the infringement has been wilful or reckless.

The Assessment of Special Damages for Wage Loss

In assessing the quantum of special damages for wage loss, the jurisprudence has rejected the employment law principle of "reasonable notice", following the direction from the Ontario Court of Appeal in its decision in *Airport Taxi Assn. v. Piazza* (1989), 10 C.H.R.R. D/6347. In that decision, the Court stated that the purpose of compensation under human rights legislation[3] is "to

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[2] In referring to the jurisprudence of the Ontario Board of Inquiry, the word "Board" is used to include decisions made under the previous legislation (*Human Rights Code, 1981,* S.O., 1981, C.53) by separate boards of inquiry appointed by the Minister of Citizenship on a case-by-case basis to hear and decide complaints referred by the Human Rights Commission.

[3] Under s. 19(b) of the *Code*, S.O. 1980, c.340, then in force, the Board was empowered to, among other things, "rectify any injury caused to any person or make compensation therefor".

restore a complainant as far as is reasonably possible to the position that the complainant would have been in had the discriminatory act not occurred" (at p. D/6348).

A number of decisions, before and since the Court of Appeal decision in *Piazza,* have considered the reasonable foreseeability of the loss as an appropriate test in assessing quantum. In awarding damages for wage loss, several decisions, under both the Ontario and federal legislation, have held that an award should cover, but not exceed, a reasonably foreseeable period for the complainant to seek and obtain alternative employment: *Torres v. Royalty Kitchenware Ltd.* (1982), 3.C.H.R.R. D/858 at 872; *Cameron v. Nel-Gor Nursing Home* (1984), 5 C.H.R.R. D/2170 at 2197; *Mears et al. v. Ontario Hydro et al.* (1983) 5 C.H.R.R. D/1927 at 1941-2; *DeJager v. Dept. of Nat. Defence* (1987) 8 C.H.R.R. D/3963 at 3965-6; *Engell v. Mount Sinai Hospital* (1989) 11 C.H.R.R. D/68 at 74; *Canada (A.G.) v. McAlpine* (1990) 12 C.H.R.R. D/253 at 258-9 (Fed.C.A.).

Other decisions, relying on the principle that the complainant is to be placed in the position that he or she would have been in but for the discrimination, have held that reasonable foreseeability should not limit a wage loss award particularly, but not only, when the complainant is reinstated in employment by the Board of Inquiry: *Shaw v. Levac Supply Ltd.* (1990) 14 C.H.R.R. D/36 at 62-4; *Cashin v. C.B.C.* (1990) 12 C.H.R.R. D/222 at 232-4; *Rinn v. Keewatin Air Ltd.* (1984) 9 C.H.R.R, D/5106 at 5130-1.

The Federal Court of Appeal, in reviewing the competing principles regarding recovery for wage loss, has enunciated a "common sense" test in *Canada (A.G.) v. Morgan et al.* (1991), 85 D.L.R. (4th) 473 at 482 (*per* Marceau, J.A.):

> I think one should not be too concerned by the use of various concepts in order to give effect to the simple idea that common sense required that some limits be placed on liability for the consequences flowing from an act, absent maybe bad faith. Reference is made at times to reasonable consequences, a test more appropriate, it seems to me, in contract law. At other times, standards such as direct

> consequences or reasonably closely connected consequences are mentioned. The idea is always the same: exclude consequences which appear down the chain of causality but are too remote in view of all the intervening facts. Whatever the source of liability, common sense still applies.

In applying these competing and overlapping principles, human rights tribunals have awarded wage loss damages for periods of time ranging from a few weeks or months to several years. The jurisprudence has been consistent in imposing a duty on complainants to mitigate their loss by making reasonable efforts to seek other employment, but has not required complainants to accept or to remain in any available job regardless of other circumstances.

The Assessment of General Damages and Damages for Mental Anguish

In assessing the quantum of general damages for loss of the right to freedom from discrimination, the Board has often considered the emotional impact of the infringement on the complainant, including such factors as insult to dignity, humilation and loss of self-respect. Where the discriminatory conduct has had a notable effect on the psychological well-being of the complainant, and if infringement has been wilful or reckless, the Commission will also request an award as compensation for the complainant's mental anguish. In the recent decision in *Naraine v. Ford Motor Co. of Canada (No.5)* (1996), 28 C.H.R.R. D/267 at 273-4, the Board characterized mental anguish awards as "aggravated" damages, intended to compensate a complainant for aggravated injury resulting from the infringement.

Until recently, human rights adjudicators have typically ordered a single award to cover both general damages and mental anguish, or have ordered an award in one or the other category, not both. Awards for general damages and mental anguish have sometimes been ordered against each of several individual respondents, or for each of a series of events or infringements, with the result that mental anguish awards have sometimes exceeded, on a global basis, the $10,000

statutory limit[5]. Three recent decisions have ordered significant separate awards in each category - for general damages and for mental anguish: *Crook v. Ontario Cancer Treatment and Research Foundation (No.3)* (1996) 30 C.H.R.R. D/104 at 126, upheld (1998) 38 O.R. (3d) 72; *Entrop v. Imperial Oil Ltd. (No. 7)*(1995) 23 C.H.R.R. D/213 at 220,upheld(1998) 30 C.H.R.R. D433[6] ; *Naraine,*[7] *supra* at 273-4. In the *Naraine* decision, the adjudicator delineated the difference between general damages, as compensation for the experience of discrimination, and damages for mental anguish, citing the distinction drawn by the Divisional Court in *York Condominium Corp. No. 216 v. Dudnik* (1991), 14 C.H.R.R. D/406 at 413.

In *Dudnik*, the Divisional Court directed that any damages for emotional stress or suffering must be ordered as a mental anguish award, and not as general damages, thus requiring a prior finding that the infringement has been wilful or reckless. The Court noted that, if an award for emotional stress could be ordered as general damages, there would be no statutory limitation on such awards, creating an inconsistency with the $10,000 limit on awards for mental anguish in cases where the infringement was wilful or reckless.

The *Dudnik* decision did not define "reckless" but defined "wilful" for the purposes of s. 41(1)(b) to require both that the conduct complained of be intentional and that the infringement of the complainant's rights be itself the purpose of the conduct.[8] In *Cameron*[9], which has been

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[5] See *Ghosh v. Domglas Inc. (No.2)* (1992), 17 C.H.R.R. D/216 at 234. Also *Naraine, supra,* at 273-4, in which the Board awards $10,000 in general damages for racial harassment under each of s. 5(1) and s. 5(2), for a total general damages award of $20,000, in addition to $10,000 for mental anguish.

[6] In the *Entrop* decision, the Divisional Court commented that the damages were not excessive.

[7] The *Naraine* decision is currently under appeal to the Divisional Court; the appeal raises the assessment of damages as an issue to be reviewed by the Court.

[8] *Supra*, at D/413, para. 57.

[9] *Supra,* at D/2198, para. 18546.

followed in numerous other cases including *Naraine,* the Board defined "reckless" in s.41(1)(b), as conduct which is "such as to evince disregard of or indifference to its consequences", which is rash or heedless, without regard for the possible injurious impact on the complainant.

Given my finding that, for a period of almost four months, the personal respondents knew or should have known that the complainant was the target of discriminatory harassment, and that they failed to take appropriate steps to deal with the harassment, I conclude that the respondents were, at minimum, reckless in their disregard for the consequences of their failure to act. Accordingly, the complainant is entitled to damages for mental anguish arising from the discrimination, as well as to special and general damages. My findings in each category of damages are set out below with reasons.

Special Damages

Award for Wage Loss

Counsel for the Commission submitted that Ms Drummond was entitled to compensation for her loss of wages for a period of five years from the date of her dismissal on September 20, 1989. This position was supported by counsel for the complainant. The Commission relied on evidence indicating that Ms Drummond had looked for work on a daily basis through much of this period, with little success. The position of the Commission was that the respondents were not entitled to rely on her lack of skills or experience as reasons for reducing their liability, particularly when the impact of an economic recession was also considered.

Counsel for the respondents opposed the five-year period proposed by the Commission and submitted that there were several possible dates which could arguably be the appropriate cut-off date for wage loss damages. The suggested dates, in order of preference for the respondents, are as follows:

(a) December 5, 1989, when the complainant began a full time hourly position with Petro Canada as a gas station attendant, only to quit some thirteen days later when she heard that there had been a robbery at the station;

(b) October 20, 1990, when the complainant commenced a part time position as a visiting homemaker for Nightingale Health Care Incorporated ("Nightingale");

(c) November 22, 1990, when the complainant's employment with the corporate respondent would arguably have ended in any event as she had been hired to work on a particular contract to supply paint products to a major distributor, and this contract was concluded on that date;

(d) January 31, 1991, when the complainant was injured in a fall while on a vehicle operated by the Toronto Transit Commission ("TTC") and was off work due to injuries until March 28, 1991;

(e) May 31, 1991, when the complainant ceased working for Nightingale;

(f) June 6, 1991, when the complainant, according to her testimony in other proceedings (discussed below) became incapacitated due to her injuries in the TTC incident.

Considering these dates in chronological order, I decline to cut off the complainant's eligibility for wage loss damages as of the date of her temporary employment as a gas station attendant. This was an outdoor position at a lesser wage and the complainant believed that her personal safety might be at risk. I find that the complainant was entitled to leave this position without affecting her wage loss award, although the amount of her wages during her employment with Petro Canada is to be deducted from her damages.

Considering next the complainant's employment at Nightingale, I note that the position was part time, averaging 24 hours a week initially, but later with reduced hours. I find that the complainant's acceptance of a part time position should not result in a discontinuance of her

eligibility for a wage loss award, but that her earnings as a homemaker are to be deducted from her award.

I also reject November 22, 1991, as a cut off date for a wage loss award. Although I accept the testimony of the personal respondents that there was such a products contract that terminated on this date, Ms Drummond was hired on an open-ended basis. There was no evidence before me to establish that other contracts were not entered into which could have supported the workforce, including her position, without reductions. Although the other female employee who suffered harassment was laid off as of November 22, 1991, this fact is unreliable as evidence that Ms Drummond would also have been laid off if she had not been terminated for an altercation which arose out of the discriminatory conduct.

Turning to the circumstances following the TTC accident on January 31, 1991, there are a number of issues with respect to the reliability of the evidence before me. The complainant in her initial evidence, in examination-in-chief and in cross-examination, did not acknowledge her employment at Nightingale. It was her evidence that, other than doing some laundry "for people", she had not worked, or had any offers of employment, except for a seven day period in October 1989, at a snack food outlet, and the Petro Canada job. When asked in her initial cross-examination if she had been injured in an accident in January 1991, she responded that this was "not your concern", and then testified that in any event she continued to look for work after the accident notwithstanding the fact that she was in pain.

After the completion of Ms Drummond's evidence, counsel for the respondents sought and obtained permission to re-cross-examine her in three areas, including her employment history and job search after her dismissal from Tower Chemicals. Counsel put before the complainant a transcript of her August 3, 1991 testimony in an examination-for-discovery in respect of a civil action against the TTC. In the examination-for-discovery, Ms Drummond stated that she was employed by Nightingale, mostly doing "light laundry duties", at the time of the TTC accident,

and that she was coming home from work when it occurred. At discovery, she testified that before the accident, she had no pain or discomfort in her back, but that after the accident, she experienced pain, especially in her back, and was unable to work until March 28, 1991. She did not indicate that she looked for work during this period, but testified that she remained at home unable to work, and returned to her part time position at Nightingale at the end of March. She testified in the examination-for-discovery that she continued at Nightingale until the beginning of June, when she was unable to continue in her position because of continuing pain arising from the accident.

This version of events was substantially different from the complainant's initial testimony in this proceeding. Her initial evidence before me was that she was unemployed and looking for work throughout the fall of 1990 and the spring/summer of 1991, when in fact she was working at or on leave from Nightingale from October 20, 1990 to May 31, 1991. Her testimony as given at the examination-for-discovery was corroborated by other evidence led before me, including testimony from a Nightingale manager, medical records and Ms Drummond's Government of Canada employment insurance records.

In re-cross-examination, the complainant first of all blurred the facts further by testifying that she did not suffer any serious injury arising out of the TTC incident, and that she would have been able to work throughout this period "if I got work". When later confronted with her evidence about the position at Nightingale, she stated that she had not reported her employment at Nightingale in her earlier testimony before me because the Commission officer investigating her case had told her not to "bother" with part time employment. At a later point, she testified that her back pain was caused, not by the TTC incident, but by lifting boxes at Tower Chemicals. She testified that her lawyer told her to overstate her injuries from the TTC accident because otherwise she would not "get any money". Ms Drummond also testified before me that she left her position at Nightingale because they were "thieving" from her pay, not because of her injuries. The

witness from Nightingale testified that she lost her employment because she asked them to pay her in someone else's name so that she could pursue her TTC claim on the basis that she was disabled.

During the re-cross-examination of Ms Drummond, counsel for the respondents contacted the police and faciliated charges of perjury being served on the complainant outside my hearing room. In a previous decision released May 8, 1996, I have criticized the conduct of respondent counsel for, at minimum, failing to advise other counsel and the Board's Registrar in advance of his intention to bring a police officer to the hearing rooms. Although the charges did not go to trial (for reasons of which I am unaware), the hearing before me was delayed for several months while the complainant retained counsel and sought a stay of this proceeding in order to protect her rights in the criminal proceeding.

Although I remain critical of the conduct of respondent counsel, I am satisfied that the complainant's testimony in re-cross-examination established that she was less than truthful in her initial evidence before the Board as to her employment history and her efforts to find work during the period from October 20, 1990 to May 31, 1991. Although she acknowledged being paid to do "some laundry", she did not indicate that she had a continuing part time position at Nightingale as a "level 1 homemaker" throughout this period and that she was on sick leave from January 31, 1991 to March 28, 1991.

Given my difficulties with Ms Drummond's credibility in this area, I am unable to rely on her testimony to the effect that she was again available and looking for work as of June 6, 1991, as she eventually stated in her re-cross-examination. Her credibility was undermined by her testimony in the examination-for-discovery to the effect that she quit Nightingale at the beginning of June 1991 because of pain from the TTC fall. Further, I do not accept the second, alternative, explanation offered by Ms Drummond for leaving Nightingale, namely that she quit because she was not being paid fairly. I prefer the testimony of her supervisor at Nightingale to the effect that she was terminated for apparently suggesting that she be paid under someone else's name.

However, regardless of the reason for the termination of her employment with Nightingale, I am unwilling to make any award for wage loss against the respondents from that point forward. Certainly by the end of May 1991, when Ms Drummond's part-time employment with Nightingale ends, there is a break in the chain of events arising out of the conduct of the respondents which was at issue in this proceeding. Applying the common sense approach enunciated in *Morgan, supra,* I find that, from June 1, 1991, when Ms Drummond again becomes unemployed, whether because she was terminated or because she quit, intervening events have broken the chain of causality flowing from the discriminatory conduct.

Further, I decline to order an award for the period from the TTC accident on January 31, 1991 to March 28, 1991, when the complainant obtained a medical certificate stating that she was able to return to work. The complainant is entitled to recover an amount representing the difference between her wages at Nightingale and the wages which she would have earned at Tower Chemicals, for the periods between October 20, 1991 and January 31, 1991, and between March 28, 1991 and May 31, 1991.

Other Special Damages

The complainant requested compensation for the cost of obtaining a medical report for use in these proceedings and for replacing her eye glasses which were broken in an altercation with one of the harassing employees. I am satisfied that a compensatory award is appropriate in relation to these two items.

General Damages and Damages for Mental Anguish

The Commission sought an award of general damages in the amount of $5000 to compensate the complainant for loss of the right to freedom from discrimination. It was submitted that the two personal respondents and the corporate respondent should be held jointly and severally liable for this sum.

In addition, the Commission requested an award for mental anguish in the amount of $10,000 as against each of the respondents separately - Kerr, Jacobsen and Tower Chemicals - for a total award of $30,000. The Commission asked the Board, in assessing quantum, to consider the vulnerability of the complainant as a recent immigrant without marketable job skills. The Commission relied on the testimony of Ms Drummond's family doctor, Dr. Mark Goldstein, to the effect that she was suffering from depression when he began treating her in June 1990. The doctor acknowledged in his testimony that there were other factors affecting her mental health, but testified that, in his professional opinion, her treatment as an employee of Tower Chemicals, and her dismissal, were, if not the most significant factors, at least key factors in her state of depression.

Counsel for the complainant, Mr. Rowe, submitted that the complainant should receive a significant award for general damages and mental anguish, noting that the complainant was one of only two women on the plant floor, and that both women suffered on-going sexual harassment and taunting. Mr. Rowe also asked the Board to award damages on the basis that the complainant had suffered reprisal for complaining about the harassment. As reprisal was not raised as an issue in the complaint or in the hearing, and given that I have made no finding of reprisal, I find that there is no basis for such an order.

Mr. Rowe also asked the Board to consider, in assessing an amount for general damages, the fact that the complainant had obtained her own counsel to represent her interests, in addition to Commission counsel, and had incurred a debt to the Ontario Legal Aid Plan which, according to Mr. Rowe, would have to be paid out of her recovery.

Counsel for the respondents submitted that an appropriate award for both general damages and mental anguish would be in the range of $2000 to $3000. He relied on the fact that the medical files of Dr. Goldstein did not document treatment for depression until February 1991, after the TTC accident, and almost one and a half years after her termination by Tower Chemicals. He

also urged the Board to consider that the complainant had testified in her examination-for-discovery in the TTC action, that she had no emotional problems prior to her fall on the bus in January 1991.

In the present case, I find that $10,000 is an appropriate award for general damages to compensate the complainant for loss of her right to be free from discrimination. In arriving at this amount I have considered the factors identified in *Torres, supra* (at D/873) as appropriate conderations in cases of sexual harassment. Accordingly, this amount recognizes the seriousness, frequency and duration of the infringement, the vulnerability of the complainant and particularly the extreme humiliation and loss of dignity which she suffered as a result of repeated sexual touching and taunting. This amount also recognizes that the complainant suffered a very severe burn inflicted upon her by one of her harassers in the course of an incident which involved intimate touching and threatening behaviour.

With respect to an award for mental anguish, I am satisfied that the complainant suffered depression as a result of the harassment and following her loss of employment. In my view, depression is properly considered to be compensable as mental anguish under s. 41(1)(b). Where a complainant has suffered depression as a result of discriminatory conduct, this has been considered by other human rights adjudicators in awarding general damages and damages for mental anquish: *Cameron, supra* at 2198; *Tabar v. Scott and West End Construction Ltd.* (1984). 6 C.H.R.R. D/2471 at 2487, upheld (1989) 10 C.H.R.R. D/6491 (C.A.).

However, in view of the complainant's contradictory testimony before me, and the evidence of her physician acknowledging the role of other factors in her depression, I find it difficult to assess an appropriate quantum to represent the impact of the discrimination. The duration and extent of the impact are unclear, particularly if the TTC accident, and her termination as an employee of Nightingale, are seen as a superceding events with their own significant contribution to the complainant's depression. In the circumstances, I find that a single global award of $5,000 would

be appropriate as compensation to the complainant for her mental anguish arising from the infringement of her rights under the *Code*.

Finally, with respect to the submissions of complainant counsel on the issue of her indebtedness to the Ontario Legal Aid Plan, I note that I was not given a copy of the Legal Aid documents and had no evidence before me as to the actual terms of the complainant's agreement with the Plan, or as to whether or not the Plan has discretion to waive all or part of its entitlement. However, I agree with counsel's submission that it would be troubling if the Plan ultimately received all of the award ordered by this Board pursuant to its statutory mandate to restore the complainant to the position which she would have been in but for the discrimination.

Nonetheless, I have no jurisdiction to order the respondents to pay an amount for the legal costs of the complainant. In *Ontario (Liquor Control Board) v. Ontario (Human Rights Commission) and Karumanchiri et al.* (1988), 9 C.H.R.R. D/4868 at 4875, the Ontario Divisional Court overturned a Board order awarding costs in favour of a group of complainants on the basis that the order was made without jurisdiction. The Court held that the power of the Board under s. 40(1) (now s.41(1)) of the *Code* to "make restitution, including monetary compensation" was not authority to award legal costs to complainants in view of the express and limited authority in s. 40(6) (now s. 41(4)) to award costs to respondents in prescribed circumstances.

Public Interest Remedies

Pursuant to the Board's jurisdiction to make orders to ensure future complaince with the *Code,* the Commission requested that the corporate respondent be required to post notices in the workplace outlining rights and responsibilities under the *Code*. In addition, counsel requested that Tower Chemicals be required to develop and implement an internal process for the investigation of employee complaints regarding human rights violations. The Commission sought an order requiring that the proposed policy be filed with the Commission for approval within six months of the date of this decision.

Counsel for the respondents did not oppose the substance of the Commissions submissions in this area, and I accept the Commission's proposals as reasonable.

In addition, counsel for the complainant asked that the personal respondents, Mr. Kerr and Mr. Jakobsen, be required to provide a written apology to Ms Drummond. I decline to order that the respondents apologize to the complainant. In my view, a personal apology would not be an effective remedy in these circumstances.

Order

The corporate respondent, Tower Chemicals, is ordered to pay to the complainant, Ena Drummond, within thirty days of the date of this Order, an amount equal to:

(a) the income she would have earned in her position at Tower Chemicals from September 20, 1989 to January 31, 1991, at an hourly wage of $7.00, minus her earnings at Petro Canada, Fruit 'N Nuts and Nightingale, and her employment insurance benefits received during this period;

(b) the income which she would have earned in her position at Tower Chemicals from March 28, 1991 to May 31, 1991, at an hourly wage of $7.00, minus her earnings at Nightingale.

In addition, the corporate respondent is ordered to pay to the complainant within thirty days of the date of this Order, an amount to represent the cost of replacing the eye glasses broken in an altercation at Tower Chemicals, and an amount to cover the cost of the medical report obtained from Dr. Mark Goldstein for use in these proceedings.

The personal respondents and the corporate respondent are jointly and severally liable to pay to the complainant, within ten days of the date of this Order, the sum of $10,000 as general damages for the loss of her right to freedom from discrimination. In addition, the personal respondents and the corporate respondent are jointly and severably liable to pay to the

complainant, within ten days of the date of this Order, the sum of $5000 as damages for mental anguish suffered by the complainant as a result of her treatment as an employee of Tower Chemicals.

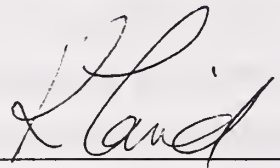
Pre-judgment interest is to be paid on each of the amounts ordered above, including the awards for special and general damages and for mental anguish, at the applicable rate set in the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Pre-judgment interest is to be calculated from the date of service of this complaint on the corporate respondent to the date of this Order.

Post-judgment interest at the rate set in the *Courts of Justice Act* will commence running on the tenth day after the date of this Order in respect of the awards for general damages and for mental anguish. Post-judgment interest on the special damages will commence running on the thirtieth day after the date of this Order.

In addition, the corporate respondent is ordered to post notices in all of its workplaces setting out rights and responsibilities under the *Code*. The corporate respondent is also ordered to develop and implement an internal human rights complaint procedure for its employees. A written copy of the complaint procedure is to be filed with the Commission for approval within six months of the date of this Order.

I will remain seized of this matter to deal with any issues arising out of the calculation of damages pursuant to this Order, until such time as the award is paid in full.

Dated at Toronto this 6th day of January, 1999:



Katherine Laird
Member, Board of Inquiry